IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2807 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MOHANBHAI MAGANBHAI ROJASARA

Versus

VINCHHIYA GRAM PANCHAYAT

Appearance:

MR PK JANI for Petitioners

None present for respondent no.11

MR MJ TRIVEDI for Respondent No. 2

MR MRUGEN K PUROHIT for Respondent No. 3

None present for the respondent No. 4

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 09/05/2000

CAV JUDGEMENT

1. The petitioner by this petition under Article 226 of the Constitution prayed for issuance of writ of mandamus or any other appropriate writ, order or direction quashing and setting aside the decision of the respondent no.1 Vinchhiya Gram Panchayat, Vinchhiya, Taluka -Jasdan, District - Rajkot, taken in its meeting held on 31st March, 1998 and under it octroi contract is given in favour of the respondent no.2. The second prayer has been made for direction to the respondents no. 3 and 4 to invite the fresh applications by way of public advertisement for grant of contract of collection of octroi for the year 1998-99 by fixing upset price at Rs. 21,05,000/-. The prayer has also been made for grant of ad interim relief. The Special Civil Application was placed in the Court on 12th April,1998 for preliminary hearing on which date the notices were issued to the respondents. The learned counsel for the petitioner made a statement on that day that the petitioner to show his bonafide will deposit a sum of Rs. 1,00,000/- in the Court on or before 20th April,1998. The petitioner then deposited this amount in Court. The matter then placed for consideration in Court on 1.5.1998. The petition was admitted and the respondent no.2 was directed to deposit a sum of Rs. 3,00,000/within a period of 2 weeks from that day in the Court subject to the final decision in the petition, failing which interim stay against the operation, implementation and execution of the resolution of respondent no.1 giving octroi contract to the respondent no.2 shall be deemed to have been granted. Next it has been ordered that in case within the time granted, the amount of Rs. 3,00,000/- is not deposited in the Court and stay become operative it would be open to the Panchayat to collect the octroi. The Court further ordered that even if Rs. 3,00,000/- are deposited by the respondent no.2, he shall go on paying Rs. 1,81,000/- to respondent no.1 Panchayat and fulfill his all other obligations under the octroi contract, because this order of the Court shall not immune him from discharging his obligations. The Court has given direction for keeping this amount to be deposited in the fix deposit in a nationalized bank for a period of 15 months. The Court has directed the office to pay Rs. 1,00.000/- deposited by the petitioner back to him. By passing of time the period of the octroi collection contract comes to an end. The learned counsel for the respondent no.2 states that this petition has now become infructous. I do not agree with this contention.

2. The learned counsel for the respondent no.2 then raised a preliminary objection that this writ petition is not maintainable as the petitioner has alternative remedy

available under the Gujarat Panchayat Act. It is true that the petitioner may have an alternative remedy in the matter, but it is not an absolute rule that in all the cases where the alternative remedy is available to the litigants, this Court has to decline to entertain the writ petitions filed directly without availing the said alternative remedy. The Court has admitted this writ petition after notice to the respondents on 1.5.1998 and at that stage this objection has not been raised by either of the respondents. Now, after about 1 year and 10 months of the octroi collection contract comes to an end, I do not consider it to be a fit case where the petitioner has to be relegated to the alternative remedy forum. There is yet another reason for which I consider it to be a fit case where this petition may not be rejected on the ground of availability of alternative remedy. After hearing the learned counsel for the parties, I am satisfied that the resolution of the Gram Panchayat impugned in this Special Civil Application is wholly unfair, unreasonable and against the basic principles of fair play and larger interest of the Gram Panchayat. It is a matter of grant of contracts for collection of octroi and Gram Panchayat is a constitutional authority has to take all the care that it gets the maximum price for this contract. This could have been possible by inviting tenders from the open market by giving wide publication. It is unfortunate that the Gram Panchayat has dealt with this matter as if it is personal business or trade of the members of Gram Panchayat. From the facts of this case, it is clearly borne out that the approach of the members of the Gram Panchayat was totally against the revenue interest of the Gram Panchayat. Whatever amount collected as a price of contract is in fact a revenue collection which is to be used for the development of the area as well as to provide the amenities and facilities to the residents. The learned counsel for the respondent no.2 vehemently contended that 3 or 4 other persons were also given their offer, but later on except the petitioner rest of the persons walked out. It is also submittede by the learned counsel for the respondent no.2 that the petitioner is one of those person who has given the offer, but later on he was walked out. However, the learned counsel for the respondent no.2 admits that the Gram Panchayat has not invited the tenders from the open market. The affidavit of the Sarpanch concerned is there on the record and what he is given out therein, if accepted then there will be illegalities and irregularities in this contract and the revenue of the Gram Panchayat has to suffer. If we go by the averments made by the Sarpanch in para-6 of the affidavit, it is nothing but only an explanation for the

sake of the explanation. I fail to see any justification in action of the Gram Panchayat to grant the contract for collection of octroi to the respondent no.2 without following the procedure of inviting tenders from the open market. It is a clear case where the members of the Gram Panchayat wanted to favour the existing contractor respondent no.2 and he has been favoured at the cost of the revenue lose of the Gram Panchayat. Not only the Gram Panchayat, but the Taluka Panchayat also appears to have favoured the existing contractor respondent no.2. The Gram Panchayat has not produced any material on the record to show that the staff of the Gram Panchayat was on election duty since December to 1 week of March. In the absence of any material, it is difficult to accept these averments. Moreover, it was equally very important work and the staff has to do this work also. It is not the case of the Sarpanch in the affidavit that the staff of the Gram Panchayat was not doing anyother work of the Gram Panchayat during the period from December to 1st week of March. It is very well known to the members of Gram Panchayat as well as the staff members that this octroi collection contract is ending on 31st March, 1998 and it is equally a very important work to process for giving this contract for next financial year. In all the offices of the Government officers and the employees are being sent for the election duty, but the work of the office could not have brought to stand still. The urgent and emergent works are to be done. Instead of sending the letter by post for fixing of the upset prices to the Taluka Panchayat, the matter could have been taken hand to hand. The approach of the Taluka Panchayat in this matter is also deserves to be deprecated. If we see the dates given by the Sarpanch if he really wanted to work in the interest of Gram Panchayat, there was sufficient time to take the order of the fixation of upset price of the contract from the Taluka Panchayat and then to invite tenders\offers by publication of advertisement from the open market. But all the members of the Gram Panchayat were interested to give this contract to the respondent no.2 and for the fulfillment of their this object have acted contrary to well settled law to be observed and followed in the matter of grant of the contract for collection of the octroi.

3. In reply affidavit Sarpanch has not given out who were other interested persons invited individually in the matter of grant of contract for collection of octroi. The Sarpanch has not stated that the petitioner no.1 not remanied present when he was called. The very fact that the names of those persons have not been disclosed, it goes to show that it is a clear case of manipulation to

favour the existing contractor. Affidavit of the Secretary of the Panchayat is also on the record. He has given out that all the persons who have given applications for jara, were instructed to remain present, but he has not disclosed that how those persons came to know that the Gram Panchayat is going to give Ijara of the collection of the octroi for the next year. The Secretary has not produced any record to show that the Gram Panchayat has informed those applicants to remain present before the members. From this affidavit of Secretary, I find that Secretary has also not acted in the interest of Gram Panchayat. The Secretary should have advised to Gram Panchayat to follow the provisions of law in the matter of grant of octroi collection contract. Possibility of connivance of the Secretary in the matter cannot be excluded. The petitioner no.1 was stated to be not remained present but this can be accepted only where the notice would have been given to him to remain present. So far as the petitioner no.2 is concerned though it is stated that he was present but has not made any proposal, is difficult to accept and believe in the absence of any record. From the proceedings of the grant of octroi collection contract, it is clear case where the members of the Gram Panchayat and the Secretary violated the relevant law and rules applicable and to be followed in the matter of grant of octroi collection contract and the ratio of decisions of this Court in the case of Arvindbhai Nanjibhai Nagrecha and Anr. Vs. Virpur Gram Panchayat and Anr. reported in 1998 (1) GLR and in the case of Punambhai Madhabhai Parmar and Anr. Vs. Bhupat Devsinbhai Barot and Anr.reported in 1994 (1) GLH 486.

4. The next question falls for consideration is in the facts of this case what relief now has to be granted in this matter. The period of the contract has come to an end on 31st March, 1999. The respondent no.2 has completed the terms of this contract. The prayer made for quashing and setting aside of the resolution of the Gram Panchayat granting this octroi collection contract to the respondent no.2 cannot be granted. But it is a case where the respondent - Gram Panchayat suffered the loss of revenue minimum to the tune of Rs. 3,00,000/-. This has been resulted because the Gram Panchayat has not followed the law and rules laid down for granting of the octroi contract. The respondent no.2 is the beneficiary and he has taken all the benefits by this contract. This Court on 1st May, 1998 has given the direction to the respondent no.2 to maintain true and correct amount of the octroi which he collected. He has not produced those accounts before this Court for the obvious reason that if

it would have been produced, it would have gone against him. The amount of Rs. 3,00,000/- which has been deposited by the respondent no.2 in this Court in pursuance of the order dated 1st May, 1998 shall be treated to be revenue of the Panchayat. As and when the Gram Panchayat applies for the withdrawal of this amount, the matter be placed before the Court. Rule is made absolute in terms aforesaid. The respondent no.2 is directed to pay Rs. 2000/- as cost of this petition to the petitioner.

(S.K.Keshote, J)

(Vipul)